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INDIGENOUS PEOPLES AND THE CONSTITUTION OF CANADA

LAW 370H1S

WINTER TERM, 2023

VOLUME ONE

Kerry Wilkins

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8	John Borrows, "With or Without You: First Nations Law (in Canada)" (1996) 41 McGill L.J. 629, 646-665 (notes omitted)
15	Murray Sinclair, "Aboriginal Peoples, Justice and the Law" in Richard Gosse, James Youngblood Henderson & Roger Carter, eds., <i>Continuing Poundmaker and Riel's Quest</i> (Saskatoon: Purich Publishing, 1994) 173-184 (excerpts)
20	Articles Between Colonel Cartwright and the New York Indians, 24 September 1664 ("Treaty of Albany"), in E.B. O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i> (Albany: Weed, Parsons, 1853-61), vol. 3 at 67-68
21	Darlene M. Johnston, "The Quest of the Six Nations Confederacy for Self-Determination" (1986) 44 U.T.Fac. L. Rev. 1
38	<i>Worcester v. Georgia</i> , 31 U.S. (6 Peters) 515 (1832) (U.S.S.C.) https://1.next.westlaw.com/Document/I7a4fb7a59ca211d9bdd1cfdd544ca3a4/Vi/ew/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3f0000016abc47903b0b866aee%3FNav%3DCASE%26fragmentIdentifie%3DI7a4fb7a59ca211d9bdd1cfdd544ca3a4%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=08d0e6b79b5e206b16e01ffa8b88d48c&list=ALL&rank=1&sessionScopeld=81016cd53998a2a24213ab0ccff3919056b612a8ac40d933590dbd6b4fdde55c&originationContext=Smart%20Answer&transitionType=SearchItem&contextData=%28sc.Search%29 [excerpts]
42	James [sákéj] Youngblood Henderson, "Empowering Treaty Federalism" (1994) 58 Sask. L. Rev. 241 [excerpts]
48	<i>Cook v. Sprigg</i> , [1899] A.C. 572 (P.C.), 577-579 © 2019 The Incorporated Council of Law Reporting for England and Wales https://www.iclr.co.uk/document/1891000574/casereport_14559/html
50	<i>Coe v. Commonwealth of Australia</i> (1979), 24 A.L.R. 118 (H.C.A.) http://eresources.hcourt.gov.au/showbyHandle/1/11483 [excerpts]
51	<i>R. v. David</i> , [2000] O.J. No. 561 (QL) (SCJ) [excerpt]
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56	<i>Duff Development Co. v. Government of Kelantan</i> , [1924] A.C. 797 (H.L.), © 2019 The Incorporated Council of Law Reporting for England and Wales https://www.iclr.co.uk/document/1890047479/casereport_42770/html [excerpt]
59	<i>Logan v. Styres</i> (1959), 20 D.L.R. (2d) 416 (Ont. H.C.J.), 1959 CanLII 406 https://www.canlii.org/en/on/onsc/doc/1959/1959canlii406/1959canlii406.html [excerpts]

- 63 Menno Boldt & J. Anthony Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians" in Menno Boldt & J. Anthony Long, eds., *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: U of T Press, 1985) 333-346
- 71 Patrick Macklem, "Distributing Sovereignty: Indian Nations and Equality of Peoples" (1993) 45 *Stanford L. Rev.* 1311 [excerpt]
- 73 Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, 2nd ed. (Oxford University Press, 2009), 79-88
- 78 *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do> [excerpts]
- 83 United Nations Declaration on the Rights of Indigenous Peoples, General Assembly Resolution 61/295 (13 September 2007)
- 91 *Thomas and Saik'uz First Nation v. Rio Tinto Alcan Inc.*, 2022 BCSC 15, <https://canlii.ca/t/jlnn6> [excerpt]
- 92 Canada, Report of the Royal Commission on Aboriginal Peoples, vol. 2 (Ottawa: Minister of Supply and Services, 1996), 169-184
- 100 *Chief Bernard Ominayak and the Lubicon Lake Cree Band v. Canada*, CCPRC/38/D/167/1984 (10 May 1990) (UNHRC), ¶¶1-3.1, 4, 6.1-7, 13.1, 13.3-14, 32.1-32.2, 33
- 104 *(Louis) Francis v. Canada*, [1956] S.C.R. 618 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6944/index.do> [excerpts]
- 107 *Baker v. Minister of Citizenship & Immigration*, [1999] 2 S.C.R. 817, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1717/index.do> [excerpts]
- 109 *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18169/index.do> [excerpts]
- 113 *Mitchell v. Minister of National Revenue*, [1997] 4 C.N.L.R. 103, 1993 CanLII 2957 (F.C.T.D.) <https://www.canlii.org/en/ca/fct/doc/1993/1993canlii2957/1993canlii2957.html?autocompleteStr=Mitchell%20v.%20m.n.&autocompletePos=3> [excerpts]
- 115 "Custom and Usage," *Halsbury's Laws of England* (4th ed.), v. 12, ¶¶401-402, 406-428 (annotations omitted)
- 121 *Casimel v. I.C.B.C.* (1993), 106 D.L.R. (4th) 720 (B.C.C.A.), 722-723, 728-731 <https://www.canlii.org/en/bc/bcca/doc/1993/1993canlii1258/1993canlii1258.html>
- 123 *Manitoba Métis Federation v. Canada (A.G.)*, 2013 SCC 14, [2013] 1 S.C.R. 623 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12888/index.do> [excerpts]
- 128 Mark Walters, "British Imperial Constitutional Law and Aboriginal Rights: A Comment on *Delgamuukw v. British Columbia*" (1992) 17 *Queen's L.J.* 350 [excerpts]
- 139 *Amodu Tijani v. Secretary, Southern Nigeria*, [1921] 2 A.C. 399 (P.C.) © 2019 The Incorporated Council of Law Reporting for England and Wales https://www.iclr.co.uk/document/1890004100/casereport_58875/html [excerpts]
- 141 *Mabo v. Queensland (No. 2)* (1992), 175 C.L.R. 1 (H.C. Australia) <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html> [excerpts]

- 148 *Mitchell v. Minister of National Revenue*, 2001 SCC 33, [2001] 1 S.C.R. 911 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do> [excerpts]
- 154 Royal Proclamation, October 7, 1763, R.S.C. 1985, Appendix 2, No. 1 [excerpts]
- 156 *R. v. Côté*, [1996] 3 S.C.R. 139 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1421/index.do>, ¶¶42-54
- 160 *Quebec (A.G.) v. Lacombe*, 2010 SCC 38, [2010] 2 S.C.R. 453 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7880/index.do> [excerpts]
- 163 *Four B Manufacturing Ltd. v. United Garment Workers of America*, [1980] 1 S.C.R. 1031 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2547/index.do> [excerpts]
- 165 *St. Catherine's Milling & Lumber Co. v. The Queen* (1889), 14 App. Cas. 46 (P.C.) [excerpts]
- 169 *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1569/index.do> [excerpts]
- 173 *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/128/index.do> [excerpts]
- 179 *Ontario Mining Company v. Seybold*, [1903] A.C. 73 (P.C.) [excerpts]
- 181 *Dominion of Canada v. Province of Ontario*, [1910] A.C. 637 (P.C.), 643-647
- 183 *Constitution Act, 1930*, 20-21 Geo. V., c. 26 (U.K.), s. 1; Saskatchewan Natural Resources Agreement (March 20, 1930), paras. 1, 10, 12
- 184 *Canard v. Canada (A.G.)*, [1976] 1 S.C.R. 170 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5909/index.do> [excerpts]
- 185 *Natural Parents v. B.C. (Superintendent of Child Welfare)*, [1976] 2 S.C.R. 751 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6220/index.do> [excerpts]
- 188 *R. v. Morris*, 2006 SCC 59, [2006] 2 S.C.R. 915 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2334/index.do> [excerpts]
- 192 *Reference re British North America Act, 1867 (U.K.)*, s. 91 (*Re Eskimos*), [1939] S.C.R. 104 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8531/index.do> [excerpts]
- 196 *R. v. Blais*, 2003 SCC 44, [2003] 2 S.C.R. 236 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2077/index.do> [excerpts]
- 202 *Daniels v. Canada*, 2016 SCC 12, [2016] 1 S.C.R. 99 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15858/index.do> [excerpts]
- 208 Canada. Report of the Royal Commission on Aboriginal Peoples (1996), vol. 4, 24-37, 41
- 215 *Cardinal v. Alberta (A.G.)*, [1974] S.C.R. 695 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5211/index.do> [excerpt]
- 216 *The Queen v. Sutherland*, [1980] 2 S.C.R. 451 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2558/index.do> [excerpts]
- 218 *Kitkatla Band v. B.C. (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, [2002] 2 S.C.R. 146 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1970/index.do> [excerpts]
- 223 *Quebec (A.G.) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7881/index.do> [excerpts]

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- 229 *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 257
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do> [excerpts]
- 233 *R. v. (Leo) Francis*, [1988] 1 S.C.R. 1025 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/334/index.do> [excerpts]
- 235 *R. v. Dick*, [1985] 2 S.C.R. 309 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/89/index.do> [excerpts]
- 240 *Guerin v. The Queen*, [1984] 2 S.C.R. 335 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2495/index.do> [excerpts]
- 246 *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1322/index.do> [excerpts]
- 254 *Osoyoos Indian Band v. Oliver (Town)*, 2001 SCC 85, [2001] 3 S.C.R. 746
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1927/index.do> [excerpts]
- 257 *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2022/index.do> [excerpts]
- 261 *Ermineskin Indian Band and Nation v. Canada*, 2009 SCC 9, [2009] 1 S.C.R. 222
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6243/index.do> [excerpts]
- 266 *Manitoba Métis Federation v. Canada (A.G.)*, 2013 SCC 14, [2013] 1 S.C.R. 623
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12888/index.do> [excerpts]
- 269 *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16969/index.do> [excerpts]
- 273 *Southwind v. Canada*, 2021 SCC 28, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18955/index.do> [excerpts]

